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IN THE

# Supreme Court of the United States

OCTOBER TERM 1995

UNITED STATES OF AMERICA, ***PETITIONER,***

*v.*

FOUR HUNDRED AND TWENTY FIVE THOUSAND, EIGHTY-NINE DOLLARS AND TWENTY-THREE CENTS ($405,089.23) IN UNITED STATES CURRENCY, ET AL., ***RESPONDENT.***

ON WRIT OF CERTIORARI TO
THE TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

## MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF ADVOCATES FOR HIGHWAY AND AUTO SAFETY AND MOTHERS AGAINST DRUNK DRIVING AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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February 23, 1996

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February 23, 1996

Pursuant to Rules 33.1 and 37.3(b) of this Court, Advocates for Highway and Auto Safety ("Advocates") and Mothers Against Drunk Driving ("MADD"), respectfully moves the Court for leave to file a brief *amicus curiae* in the above entitled case.

## CONSENT WITHHELD BY RESPONDENT

1. Counsel of record for Respondents has not replied to movant's letter requesting consent to the filing of a brief *amicus curiae*. Counsel for *amici* was informed that consent was withheld because respondents' counsel of record and his co-counsel failed to confer with each other regarding the request of *amici*. Petitioner, the United States of America, did consent through counsel to the filing of the *amicus* brief.

## INTEREST OF *AMICI CURIAE*

2. *Amici* are non-profit organizations that seek to prevent alcohol-related motor vehicle crashes due to drunk driving. Advocates is a coalition of national safety, consumer, law enforcement organizations and insurance companies and insurance agents' associations. MADD is a national organization of persons who have been directly affected by motor vehicle crashes caused by drunk drivers. *Amici* organizations promote anti-drunk driving laws and regulations and have supported laws to suspend the driver's licenses of drunk drivers in order to protect public safety.

3. The issue presented in the case before the Court is whether civil proceedings in the context of property forfeiture constitute punishment under the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution.



This issue is of concern to *amici* because the same legal claim has been raised in state prosecutions for drunk driving. Persons charged with drunk driving offenses have asserted that separate civil proceedings to suspend a driver's license constitute punishment and, therefore, bar subsequent criminal prosecution by the state.

4. State courts have overwhelmingly determined that the suspension of a driver's license is not punishment within the meaning of the Double Jeopardy Clause. However, a decision to uphold the lower court decision in this case will be used to relitigate and overturn those state court decisions.

5. A case involving a double jeopardy claim based on driver's license suspension has been filed with the Court. *State of Maryland v. Jones*, 666 A.2d 128 (Md. 1995) *petition for cert. filed*, 64 U.S.L.W. 3510 (U.S. Jan. 11, 1996) (No. 95-1131).

6. *Amici* seek to assure that the Court is presented with the larger legal and social context in which the Court's decision will be made. It is expected that the litigants in the case before the Court will focus exclusively on Double Jeopardy protection in the context of property forfeiture. Only passing reference to the issues addressed in the brief of *amici* was made in the briefs filed in support of, and in opposition to, the *petition for certiorari* in this case.

## CONCLUSION

For the above stated reasons we respectfully urge the Court to grant this motion for leave to file the accompanying *amicus* brief in the present case in support of the position of the Petitioner.

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*Amici curiae* respectfully submit this brief in support of the position of the Petitioner. Counsel for respondents have not consented to the filing of this brief.

## STATEMENT OF INTEREST

*Amici curiae*, Advocates for Highway and Auto Safety ("Advocates") and Mothers Against Drunk Driving ("MADD"), file this brief in order to apprise the Court of a related issue that is at stake in this matter and to assure that the Court is fully informed of the potential implications of its decision in contexts beyond that of civil property forfeiture. The Court's decision in this case may have a great impact on many other aspects of life and social issues in the United States, most particularly the battle against the scourge of drunk driving on our nation's highways. The decision in this case is of critical importance to the safety of motorists throughout the nation.

Advocates is a broad-based alliance of safety, consumer, and law enforcement groups and insurers and insurance agents' organizations that promotes the adoption of highway safety legislation, standards, policies and programs at the federal and state levels in order to reduce deaths, injuries and economic costs associated with motor vehicle crashes. Advocates devotes a major portion of its organizational effort specifically to reducing the number of motor vehicle crashes that result from drivers operating their vehicles while under the influence of alcohol.[1] Advocates

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[1]State penal codes use either driving under the influence of alcohol or driving while intoxicated, or both, to describe drinking and driving offenses. For convenience the more general term of drunk driving will be used in this brief.

has endorsed and actively promoted state legislative initiatives intended to reduce the incidence of drunk driving and alcohol-related crashes including, administrative license suspension laws (ALS),[2] implied consent laws, and legislation that designates maximum levels of blood alcohol concentration.

MADD was founded to stop drunk driving and to assist the victims of this violent crime. For over a decade, MADD has been the preeminent private organization in the fight against the lethal combination of drinking and driving. MADD actively participates in public information programs, public and private studies, legislative initiatives, and law enforcement efforts aimed at reducing the incidence of alcohol-related crashes. MADD has actively supported administrative license suspension legislation in the many states, as well as other measures to reduce drunk driving and alcohol-related crashes, fatalities, and injuries, such as passage of alcohol *per se* laws, restrictions on the sale of beer kegs to those under 21 years of age, child endangerment legislation, and victims rights provisions. Substantive research as well as extensive experience have convinced MADD that license suspension is one of the most effective remedies to the social problem presented by drunk drivers.

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[2]The majority of state laws that administratively intermit driver's license privileges for drunk driving offenses use the terminology administrative license suspension or ALS, while a minority of state laws use the term administrative license revocation or ALR.



## SUMMARY OF ARGUMENT

If the Ninth Circuit decision is upheld, its broad scope will affect diverse types of cases and have potentially serious social implications. Litigants in a wide variety of cases have relied on the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, and this Court's precedents, to argue that any government restriction on personal action is a punishment. Double jeopardy has been raised in numerous cases involving activities subject to governmental regulation in the public interest. A sweeping decision in this case will be applied in distinctly different factual contexts and the Court's reasoning will not be limited to property forfeiture situations alone.

Particularly with respect to state regulation of the highways, defendants charged with drunk driving have claimed that any temporary suspension of a driver's license constitutes punishment that bars subsequent criminal prosecution. Because drunk driving is a serious health and safety problem, states have enacted license suspension laws in order to remove proven safety threats from the highway and to reduce the number of drunk driving incidents. The emerging consensus among state courts, including the unanimous agreement of the highest state courts to address the issue, is that state license suspension laws are remedial in nature and that license suspension is not punishment.

The Court has not yet ruled on the constitutionality of driver's license suspension in the double jeopardy context. The Court has, however, recognized the compelling state safety interest in prohibiting drunk driving and has sustained the constitutionality of a number of state anti-drunk driving statutes, including license suspension.

## ARGUMENT

### I. THE DECISION IN THIS CASE WILL AFFECT LEGAL ISSUES AND SOCIETAL ISSUES BEYOND PROPERTY FORFEITURE

The decision in this case will have far reaching implications that may affect numerous legal issues and areas of societal concern beyond the context of civil forfeiture proceedings. If the Court upholds a broad interpretation of the definition of punishment for purposes of the Fifth Amendment Double Jeopardy Clause, the ruling will spawn litigation in many other contentious areas and may undermine the public interest and public safety.

The Ninth Circuit Court of Appeals decision in *United States v. $405,089.23 U.S. Currency*, 33 F.3d 1210 (9th Cir. 1994), broadly concludes that all civil forfeitures under certain statutory provisions constitute punishment.[3] The decision prohibits a separate civil forfeiture proceeding subsequent to criminal prosecution, the situation actually presented in that case, but would also act prospectively to bar any criminal prosecution brought subsequent to a civil forfeiture proceeding. The Ninth Circuit's analysis relied on the finding that the civil forfeiture statutes are not entirely remedial but "serve[] at least in part to deter and punish guilty conduct." *Id.* at 1221. Litigants around the nation in non-forfeiture cases rely on precisely the same argument,

[3]18 U.S.C. § 981(a)(1)(A) and 21 U.S.C. § 81(a)(6). The concerns raised by *amici* in this brief are equally applicable to the issues in the companion case No. 95-345, *United States v. Ursery*, 59 F.3d 568 (6th Cir. 1995).



reasoning, and analysis as was incorporated in the Ninth Circuit decision.

The specific facts presented in civil forfeiture cases, as well as the history of civil forfeiture statutes, can be distinguished from other types of government actions and laws. In practice, however, the Court's prior decisions that have found certain civil proceedings constitute punishment under double jeopardy doctrine have been applied in cases involving a broad range of circumstances. The facts in *United States v. Halper*, 490 U.S. 435 (1989), involved government recovery of costs, and those in *Austin v. United States*, 113 S. Ct. 2801 (1993), involved civil forfeiture, and *Dept. of Rev. of Montana v. Kurth Ranch*, 114 S. Ct. 1937 (1994), dealt with a state tax on contraband. Although these cases all involved recovery of monetary claims under specific statutory schemes, the reasoning and language in these cases has been stretched by litigants to apply in cases where no compensatory costs, monetary charges, fines, levies, forfeitures, or taxes are at stake. In a plethora of cases in the federal and state courts litigants have sought to extend the reasoning and the wording of *Halper*, *Austin*, and *Kurth Ranch* to argue that any deprivation of property or restriction on personal conduct constitutes punishment so as to prohibit subsequent criminal prosecution. Litigants in federal prosecutions have already claimed that non-monetary restrictions on their conduct and ability to engage in business, professional and other activities amount to punishment within the meaning of the Double Jeopardy Clause. The ability of federal agencies to regulate violations of statutory standards in the public interest will be greatly restricted if any and all limitation on conduct is deemed to be punishment. Protection of the public interest in the generic

drug industry,[4] the banking industry,[5] commodity trading and stock brokerage,[6] real estate brokerage involving public housing,[7] medicare fraud,[8] and government contracting,[9] are among the fields of enterprise in which defendants have asserted that prior regulatory action, taken to protect the public, amounts to punishment within the meaning of the double jeopardy protection.

States also engage in civil and administrative actions which are separate from criminal prosecutions and are intended to protect the public interest. State authorities and

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[4]*Bae v Shalala*, 44 F.3d 489 (7th Cir. 1995) (debarment from industry activity was remedial where intent was to deter future misconduct by others, not solely to punish violators).

[5]*United States v. Hudson*, 14 F.3d 536 (10th Cir. 1994) (nonparticipation sanction solely designed to protect the integrity of the banking industry).

[6]*United States v. Furlett*, 974 F.2d 839 (7th Cir. 1992) (trading ban on a commodity broker intended to ensure the integrity of the markets).

[7]*United States v. Bizzell*, 921 F.2d 263 (10th Cir. 1990) (18-month suspension of real estate broker participation in public housing program held remedial).

[8]*Manocchio v. Kusserow*, 961 F.2d 1539 (11th Cir. 1992) (purpose of five year exclusion of doctor from medicare program participation is to protect public and is nonpunitive).

[9]*Steuart & Bro. v. Bowles*, 322 U.S. 398 (1944); *Janik Paving & Construction, Inc. v. Brock*, 828 F.2d 84 (2d Cir. 1987).



regulatory agencies have oversight of professional and business activities and licensing authority. In state courts, similar double jeopardy claims have been raised in an effort to prevent criminal prosecution when a civil or administrative action has been taken to discipline attorneys,[10] physicians,[11] chiropractors,[12] dentists,[13] and prison officers.[14] Of greatest importance to *amici* is the use of the Double Jeopardy Clause in the context of criminal prosecutions for drunk driving.

## II. DRUNK DRIVERS ASSERT LICENSE SUSPENSION IS PUNISHMENT UNDER THE DOUBLE JEOPARDY CLAUSE

In case after case across the nation defendants have asserted that criminal prosecutions for drunk driving are prohibited where the state has previously suspended their driver's license for the same conduct in a separate

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[10]*Matter of Rabideau*, 306 N.W.2d 1 (Wis. 1981), *appeal dismissed*, 454 U.S. 1025 (1981).

[11]*Loui v. Board of Medical Examiners*, 889 P.2d 705 (Haw. 1995); *Alexander v. Louisiana Board of Medical Examiners*, 644 So.2d 238 (La. Ct. App. 1994); *Emory v. Texas State Board of Medical Examiners*, 748 F.2d 1023 (5th Cir. 1984).

[12]*Schillerstrom v. Arizona*, 885 P.2d 156 (Ariz. 1994).

[13]*Allen v. Louisiana State Board of Dentistry*, 603 So.2d 238 (La. Ct. App. 1992).

[14]*Ayars v. New Jersey Department of Corrections*, 597 A.2d 1084 (N.J. Super. Ct. 1991).

administrative proceeding. The contention that a driver's license suspension is punishment for the purposes of double jeopardy is predicated on interpretations of the Court's decisions in *Halper, Austin,* and *Kurth Ranch.* If this position were sustained, it could result in the elimination of license suspensions as an effective means of preventing drunk driving behavior. At worst, ALS laws would be significantly amended or repealed since state authorities would be unlikely to accept temporary license suspensions in lieu of the criminal prosecution of drunk drivers. At best, states would be forced to impose license suspensions only as part of criminal proceedings, a far less effective public safety measure. States should not have to face the dilemma of either protecting public safety or prosecuting drunk drivers, and the public should not have to be exposed to the increased safety threat that would exist if ALS laws were rendered less effective. The decision in this case will, therefore, have a carryover effect that may fan the flames of litigation in drunk driving cases and may ultimately affect the legitimacy of state ALS laws.

### A. DRUNK DRIVING IS A SOCIETAL PROBLEM OF EPIDEMIC PROPORTIONS

Motor vehicle crashes are a major health and safety problem in the nation and in every state. Although the total number of annual highway fatalities have dropped from record high death tolls in the 1960s and early 1970s, each year more than 40,000 Americans still die and millions are injured, tens of thousands of whom sustain serious injuries. In the most recent year for compiled statistics, 1994, motor vehicle crashes resulted in 40,676 deaths and 3,215,000



bodily injuries.[15] While fatalities attributable to drinking and driving have diminished in recent years, over forty percent of the 1994 fatality total, 16,589 deaths, occurred in alcohol-related crashes. The vast majority of those deaths, 13,094, involved a drunk driver with a blood alcohol concentration (BAC) in excess of the state specified limit.[16] Even though drunk driving crashes cause fewer deaths than a decade ago, the numbers remain staggering and the cost to society in terms of human suffering, family disruption, medical resources, and financial burdens are enormous.

This Court is well aware of the brutal toll that drunk driving exacts from society and has repeatedly remarked on this problem. In a long line of cases, commencing with *Breithaupt v. Abram*, 352 U.S. 432 (1957) through *Michigan Dept of State Police v. Sitz*, 496 U.S. 444 (1990), the Court has recognized the danger posed by drunk drivers on American highways. In *Breithaupt* the majority wrote that "the increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield." In a case involving civil liability for motor vehicle crashes, Justice Blackmun pointed out that, as of 1969, the cumulative death toll from motor vehicle crashes exceeded the total number of deaths incurred in all U.S. wars. *Perez v. Campbell*, 402 U.S. 637, 657 (1971) (Blackmun, J., concurring in part and dissenting in part). "In making comparisons it must be kept in mind that

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[15] *Traffic Safety Facts 1994*, p. 15, Table 2, U.S. Department of Transportation (1995).

[16] *Id.*, p. 32, Table 13. State ALS laws set the level of blood alcohol at which license suspension is authorized at either 0.08% BAC (14 states) or 0.10% BAC (36 states).

nearly everyone is exposed to motor-vehicle accidents but relatively few are exposed to war deaths." *Id.* at 672 ("Appendix To Opinion of Blackmun, J."). In another case, the Court stated that "[t]he carnage caused by drunk drivers is well documented and needs no detailed recitation here. This Court, while not having the daily contact with the problem that the state courts have, has repeatedly lamented the tragedy." *South Dakota v. Neville*, 459 U.S. 553, 558 (1983) (citations omitted). Most recently, in *Michigan Dept of State Police v. Sitz*, the Court reiterated its continuing concern over the safety threat posed to the public by drunk drivers.

> No one can seriously dispute the magnitude of the drunken driving problem or the State's interest in eradicating it.
>
> * * * 'Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage.' 4 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 10.8(d), p. 71 (2d ed. 1987).

496 U.S at 451 (footnote and citations omitted). Because of the tragic proportions and devastating effect of drunk driving crashes, remedial measures such as license suspension have been adopted in all states.

### B. LICENSE SUSPENSION LAWS PROTECT PUBLIC SAFETY

In order to reduce the incidence of drunk driving states have adopted a number of measures including the passage of ALS statutes. ALS permits state authorities to protect the



travelling public by administratively suspending the driver's license of any driver who operates their vehicle with a BAC percentage above the state maximum as determined by scientific testing.[17]

A driver's BAC level is determined either by a blood test or by the more common use of breathalyzer equipment. The Court has approved the use of blood tests to determine BAC levels. In *Breithaupt*, *supra*, a Fifth Amendment case that focused on the issue of self-incrimination, the Court reasoned that the interest of the individual in avoiding personal intrusion, such as a blood test, must be balanced against "the interests of society in scientific determination of intoxication, one of the great causes of the mortal hazards of the road." 352 U.S. at 439. Modern breathalyzer equipment is less invasive than blood tests and determines the percentage of alcohol in the blood stream from a sample of exhaled breath blown into a tube by the driver.

ALS laws have been enacted by all 50 states. Thirty nine states and the District of Columbia permit administrative license suspension prior to a hearing and all 50 states (and the District of Columbia) authorize the civil suspension or revocation of a license following a hearing. The Court has previously considered the widespread adoption and use of chemical tests to determine BAC some indication of the constitutional validity of state action. The opinion in *Breithaupt* referenced the fact that at that time 47 states had authorized chemical (blood) tests to determine BAC levels of

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[17]Suspensions are also authorized or mandated under implied consent laws which require drivers to submit to breathalyzer or blood testing when there is cause to believe that the driver is under the influence of alcohol.

drivers, 23 by state law and the remainder by regulation or state court approval. *Id.* at 436 n.3. The widespread adoption of such tests was viewed as some evidence that they were not offensive and did not violate constitutional protections. In *South Dakota v. Neville*, another case involving a challenge based on protection against self-incrimination, the Court stated that no constitutional violation occurs when appropriate procedural protections accompany the test. The Court concluded that a one year suspension of a license for refusing to take a blood-alcohol test "is unquestionably legitimate." 459 U.S. at 560.[18] Moreover, the Court has acknowledged that statutes which permit summary sanctions for the prompt removal of drunk drivers "contributes to the safety of public highways." *Mackey v. Montrym*, 443 U.S. 1, 18 (1978).

### C. MOST STATE COURTS HAVE HELD LICENSE SUSPENSION IS NOT PUNISHMENT

The assertion of double jeopardy protection in the context of criminal prosecutions for drunk driving has been heard in the court of last resort in 14 states. Those courts have unanimously rejected the claim that driver's license suspension constitutes punishment for double jeopardy

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[18]In *South Dakota v. Neville*, *supra*, the Court engaged in a lengthy discussion of Fifth Amendment principles and while the issue was one of self-incrimination, and whether refusal to take the test could be used as evidence, it is noteworthy that in upholding the state statute the opinion makes no mention of any potential violation of double jeopardy, a companion protection.



purposes so as to prohibit a subsequent criminal prosecution.[19] The state courts have determined that the ALS laws at issue were either entirely or predominantly remedial in intent and effect and, therefore, did not represent punishment subject to double jeopardy analysis under *Halper*, *Austin*, and *Kurth Ranch*. In other states, intermediate appellate courts have also held that license suspension does not bar subsequent criminal prosecution.[20] A number of

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[19]*State of Nebraska v. Hansen*, 249 Neb. 177 (Neb. Jan. 26, 1996); *State of Minnesota v. Hanson*, No. C1-95-531, 1996 Minn. LEXIS 8 (Minn. Jan. 19, 1996); *State of Iowa v. Kocher*, No. 369/95-348, 1996 Iowa Sup. LEXIS 17 (Iowa Jan. 17, 1996); *State of Connecticut v. Hickham*, 235 Conn. 614 (Conn. Dec. 26, 1995); *State of Kansas v. Mertz*, 1995 Kan. LEXIS 149 (Kan. Dec. 8, 1995); *Luk v. Commonwealth*, 421 Mass. 415 (Mass. Nov. 27, 1995); *State of Idaho v. Talavera*, 1995 Ida. LEXIS 156 (Idaho Nov. 3, 1995); *State of North Dakota v. Zimmerman*, 539 N.W.2d 49 (N.D. 1995); *State ex. rel. Schwartz*, 904 P.2d 1044 (N.M. 1995); *State of Maryland v. Jones*, 666 A.2d 128 (Md. 1995); *State of Vermont v. Becker*, 1995 Vt. LEXIS 98 (Vt. Sept. 20, 1995); *State of New Hampshire v. Cassady*, 662 A.2d 995 (N.H. 1995); *State of Maine v. Savard*, 659 A.2d 1265 (Me. 1995); *State of Hawaii v. Higa*, 897 P.2d 928 (Haw. 1995).

[20]*State of Utah v. Arbon*, 1996 Utah App. LEXIS 4 (Utah Ct. App. Jan. 4, 1996); *State of Ohio v. Sanders*, 1995 Ohio App. LEXIS 5852 (Ohio Ct. App. Dec. 21, 1995); *Ex Parte James Martin Tharp*, 1995 Tex. App. LEXIS 3255 (Tex. Ct. App. Dec. 21, 1995); *People of the State of Illinois v. Dvorak*, 1995 Ill. App. LEXIS 926 (Ill. App. Ct. Dec. 13,

(continued...)

these appellate cases overruled lower trial and appellate court decisions that held a driver's license suspension was punishment so as to prohibit a separate criminal prosecution. Conflicting lower court decisions are still emerging and await resolution.[21] One state case has already reached this Court.[22]

The overwhelming body of developing state law in the area of license suspension has determined that driver's license suspensions do not constitute punishment. The state decisions are premised on the finding that ALS laws are remedial in nature since they are intended to protect public safety by removing from our highways, at least temporarily, drivers who have proven themselves to be a threat to public safety. *Amici* believe that these decisions are correct interpretations of the Court's prior decisions and double

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[20](...continued)
1995); *Marzolf v. Superior Court of the State of Arizona*, 1995 Ariz. App. LEXIS 258 (Ariz. Ct. App. Nov. 21, 1995); *Tench v. Commonwealth of Virginia*, No. 0773-95-2 1995 Va. App. LEXIS 786 (Va. Ct. App. Oct. 24, 1995); *Jackson v. State of Georgia*, 462 S.E.2d 802 (Ga. Ct. App. 1995); *State of Alaska v. Zerkel*, 900 P.2d 744 (Alaska Ct. App. 1995); *Baldwin v. Department of Motor Vehicles*, 42 Cal. Rptr.2d 422 (Cal. Dist. Ct. App. 1995).

[21]*State of Ohio v. Gustafson*, No. 94 C.A. 232 (Ohio Ct. App. June 27, 1995), *appeal argued*, Nos. 95-1466 and 95-1377 (Ohio Sup. Ct. Feb. 7, 1996); *State of Florida v. Reilly*, No. 94-6661MM10 (Broward County Ct. 1994).

[22]*State of Maryland v. Jones*, 666 A.2d 128 (Md. 1995) *petition for cert. filed*, 64 U.S.L.W. 3510 (U.S. Jan. 11, 1996) (No. 95-1131).



jeopardy analysis in *Halper*, *Austin*, and *Kurth Ranch*. *Amici* are concerned, nonetheless, that a decision in the civil forfeiture context should not give cause to reconsider the state court decisions in drunk driving cases.

## III. EXERCISE OF TRADITIONAL STATE POLICE POWERS TO CURB DRUNK DRIVING IS CONSTITUTIONAL

The decisions of the Court have "traditionally accorded the states great leeway in adopting summary procedures to protect public health and safety." *Mackey v. Montrym*, 443 U.S. at 17. Decisions involving drunk driving situations repeatedly acknowledge that states have an important interest in highway safety and the removal of drivers who may pose a safety hazard. *Id.* at 18. Those cases establish that states have a legitimate and compelling interest in regulating traffic on state highways in order to protect the public. *Dixon v. Love*, 431 U.S. 105, 114 (1977). Thus, although the Court has not ruled on the specific issue of whether administrative license suspension constitutes punishment under the Double Jeopardy Clause, the Court has repeatedly upheld as constitutional the reasonable exercise of state police powers in the context of drunk driving cases.

In many precedents the Court has upheld the traditional exercise of state police powers to protect its citizens and other highway users. The Court has sustained reasonable blood test requirements[23] and implied consent statutes[24] from challenges based on Fifth Amendment protection

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[23]*Breithaupt v. Abram, supra.*

[24]*South Dakota v. Neville, supra.*

against self-incrimination. Similarly, the Court upheld ALS laws,[25] like those involved in the current state court decisions, and implied consent laws[26] despite assertions that those laws violated Fourteenth Amendment due process rights. Reasonably formulated state use of sobriety checkpoints was also held to be a constitutionally valid exercise of state police power despite a claim that such action violates Fourth Amendment strictures against unreasonable searches and seizures.[27]

These precedents, although relevant to other constitutional provisions, establish that states retain traditional police powers to regulate drivers on their highways especially in order to maintain public safety.

There is no reason to believe that the outcome should be different with respect to claims of Fifth Amendment Double

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[25]*Dixon v. Love*, *supra*. The Illinois statute "is designed to keep off the roads those drivers who are unable or unwilling to respect traffic rules *and the safety of others*." 431 U.S. at 114-15 (emphasis added).

[26]*Illinois v. Batchelder*, 463 U.S. 1112 (1983) (the interest of the States in depriving the drunk driver permission to continue operating an automobile is particularly strong); *Mackey v. Montrym*, *supra*.

[27]*Michigan Department of State Police v. Sitz*, *supra*. The *Sitz* Court stated that while random stops of motor vehicles are not condoned, there is no doubt about the validity "'of roadside truck weigh-stations and inspection checkpoints, at which some vehicles may be subject to further detention for safety and regulatory inspection than are others.'" 496 U.S. at 454, *quoting Delaware v. Prouse*, 440 U.S. 648, 663 n.26 (1979)).

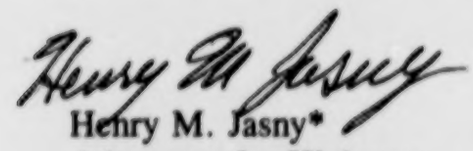


Jeopardy rights in cases of license suspension to protect public safety on our highways.

## CONCLUSION

Judgment should be entered for the petitioner.

Respectfully submitted,



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